



STATE OF DELAWARE  
**JUSTICE OF THE PEACE COURT No. 13**  
1010 CONCORD AVENUE  
CONCORD PROFESSIONAL CENTER  
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

SYSTEM ID: @2958728  
SAVITA NICASTRO  
401 N CLEVELAND AVE  
WILMINGTON, DE 19805

VS.

Civil Action No.: JP13-17-004560

SYSTEM ID: @2958729 / @2958730  
LAURICE ROBERTS / PHILIP ROBERTS  
906 WILLINGS WAY  
NEW CASTLE DE 19720

**Appearances:**

Plaintiff Savita Nicastro appeared pro se  
Defendants Laurice Roberts and Phillip Roberts, represented by Dmitry Pilipis, Esq.

Before: Lee, D.C.M.; Bawa, J.; Freel, J.

Heard: August 2, 2017  
Decided: September 5, 2017

**ORDER ON TRIAL DE NOVO**

This case is a summary possession action brought by Plaintiff Savita Nicastro against Defendants Laurice Roberts and Philip Roberts on April 18, 2017. The case was originally heard before a single judge, (Hanby J.) on May 25, 2017. After trial, a judgment was entered in favor of the Plaintiff and against Defendant Laurice Roberts for rent in the amount of \$6,360.00, court costs and possession. A default judgment was entered against Defendant Philip Roberts. Defendant Laurice Roberts filed a timely appeal pursuant to 25 Del. C. § 5717. Trial de Novo was held on August 2, 2017.

At the *de novo* hearing, Plaintiff Savita Nicastro was represented by James Haley, Esq. Defendant Laurice Roberts was represented by Dmitry Pilipis, Esq. The three-judge panel consisted of Deputy Chief Magistrate Lee, Judge Bawa and Judge Freel.

At pretrial, Defendant motioned the Court to dismiss the summary possession action without prejudice on the following grounds:

1. The complaint does not satisfy the requirements outlined in 25 Del. C. §5707. Specifically, the complaint does not state the relationship of the parties or the description of the rental property.
2. The five-day letter is over-stated in violation of 25 Del. C. §5502. Specifically, Defendant argues, the lease agreement is subject to subsidized housing provisions, whereby the tenant is only responsible for approximately one-third of the market rent. However, the five-day letter includes a demand for market rent instead of the tenant's portion. Additionally, the late fees were calculated on the market rent and not the tenant's portion.

Plaintiff argues the Court should not consider Defendant's oral Motion to Dismiss, which should have been submitted in writing prior to the day of trial. Next, Plaintiff argues that the Motion should be denied, as the concise statement of facts on the complaint form and attached five-day letter provide sufficient information to advise the parties of the basis for the lawsuit and the parties involved. Finally, Plaintiff argues any dismissal based on the inaccuracy of the five-day letter should be based on evidence, not the statements of counsel.

The Court held that 25 Del. C. § 5709 permits a Defendant to answer orally or in writing. The answer may contain any legal or equitable defense or counterclaim. Therefore, the Court will consider Defendant's oral Motion to Dismiss. The Court further finds that the complaint is in substantial compliance with 25 Del. C. § 5707, therefore the Motion to Dismiss on this ground is denied. However, the Court allowed limited testimony on the Motion to Dismiss based on the over-stated five-day letter.

Plaintiff Savita Nicastro testified that market rent on the subject property is currently \$1020.00 per month. However, the Defendant is a participant in the New Castle County Section 8 program, whereby the tenant's portion is \$388 per month. Plaintiff testified that the lease was terminated pursuant to a 60-day notice in November 2016. A prior summary possession case was heard in this Court on April 6, 2017, resulting in a dismissal without prejudice because the notice was defective. Defendants retained possession of the rental property. Plaintiff testified that no rent has been paid by the Defendants or Section 8 since November 2016. Plaintiff sent a five-day letter on April 6, 2017 demanding 5 months' rent at the full market rent of \$5,355.00 plus 5% of the market rent for late fees for December 2016 through April 2017. The default was not cured within the five-day period and the instant summary possession action was filed April 18, 2017. On cross-examination, Plaintiff was asked if late fees were part of the lease agreement. Plaintiff responded that the standard lease did not include a provision for late fees.

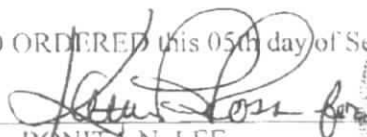
At the conclusion of the Plaintiff's testimony, Defendant renewed the Motion to Dismiss on additional grounds that not only did the five-day letter demand market rent and inflated late fees, but the lease does not include a provision for late fees at all.

It appears that Plaintiff considered the lease terminated back in November 2016 despite the court's order in April 2017 dismissing the case, which left the Defendants in possession of the property. Although we find Plaintiff's testimony credible that she has not received subsidy payments from Section 8 since November, there is no evidence that the Defendants were terminated from the program. Plaintiff made no attempt to contact Section 8 concerning the rent subsidy payments. The Court finds that Plaintiff's five-day letter incorrectly demanded month rent of \$1020.00, when the Defendants are only responsible for \$388.00. In *Ferris Properties v Barbara Graziano*, Del. J.P., C.A. No. J0104035013, the Justice of the Peace Court held that 5% late fee should be calculated on the tenant's portion of the rent. Therefore, the demand for late fees based on market rent is improper. Additionally, Plaintiff admits the lease does not include any provision for late fees. 25 Del. C. § 5501(d) states that late fees are allowable if provided for in the rental agreement. In *Jerome Jennifer v. Jennifer Deputy*, Del. J.P., C.A. No. J0105031613, the Court held that a demand for excessive late

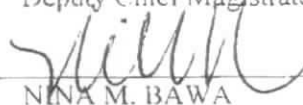
fees resulted in a defective five-day letter which prohibited the award of possession to the landlord. Therefore, the five-day letter should not include a demand for these fees. Consequently, the five-day letter sent to the Defendants demanding market rent and late fees is over-stated, and therefore defective.

For reasons stated, Defendant's Motion to Dismiss Without Prejudice is granted.

IT IS SO ORDERED this 05th day of September, 2017



BONITA N. LEE  
Deputy Chief Magistrate



NINA M. BAWA  
Justice of the Peace



(for) BEATRICE A. FREEL  
Justice of the Peace

